

AMENDED IN ASSEMBLY JANUARY 8, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 204

Introduced by Assembly Members Migden and Villaraigosa
Member Migden
(Coauthor: Senator Burton)

February 3, 1997

An act to amend ~~and repeal Section 3209.3~~ Sections 139, 139.2, 3209.3, 3209.5, 4600, 4600.3, 4600.5, and 4601 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 204, as amended, Migden. Workers' compensation: acupuncturists.

Existing law requires the Industrial Medical Council to consist of 9 doctors of medicine, 2 doctors of osteopathic medicine, 2 doctors of chiropractic medicine, one physical therapist, and one doctor of psychology.

This bill would additionally require that an acupuncturist serve on the council.

Existing law requires the council to appoint qualified medical examiners for the evaluation of medical issues.

This bill would add the qualifications necessary for acupuncturists serving as qualified medical examiners.

Existing law requires employers to offer necessary medical treatment and services to injured employees.

This bill would add acupuncture to the list of available treatments and make conforming changes.

Existing law allows employees to choose a personal physician or personal chiropractor for treatment.

This bill would also allow employees to choose a personal acupuncturist for treatment.

Existing law requires health care service plans to provide injured employees with chiropractic services for work-related injuries, if they so choose.

This bill would also require health care service plans to provide injured employees with acupuncture services for work-related injuries, if they so choose.

Existing law requires an employer, upon the request of an employee, to tender the employee one change of physician or chiropractor within 5 working days.

This bill would permit an employee to alternatively request an acupuncturist as a part of the one change.

~~Existing law, until January 1, 1999, defines the term “physician” as including acupuncturists for purposes of treating injured employees entitled to workers’ compensation medical benefits.~~

~~This bill would delete the repeal date and would make conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 3209.3 of the Labor Code, as~~
2 *SECTION 1. Section 139 of the Labor Code is*
3 *amended to read:*
4 139. (a) The Industrial Medical Council shall consist
5 of nine doctors of medicine, at least one of whom shall be
6 a psychiatrist and at least one of whom shall specialize in
7 occupational medicine, two doctors of osteopathic
8 medicine, two doctors of chiropractic, one physical
9 therapist, ~~and~~ one doctor of psychology, *and one*
10 *acupuncturist*, all of whom shall be licensed to practice in
11 this state, and one medical economist. The administrative
12 director shall be an ex officio, nonvoting member of the
13 council, and the medical director appointed pursuant to

1 Section 122, shall serve as executive secretary of the
2 council.

3 (b) The Governor shall appoint four doctors of
4 medicine, two doctors of osteopathic medicine, one
5 doctor of chiropractic to the council, and one medical
6 economist. The Senate Committee on Rules shall appoint
7 three doctors of medicine, one of whom shall be a
8 psychiatrist, and the doctor of chiropractic. The Speaker
9 of the Assembly shall appoint two doctors of medicine,
10 one of whom shall be an occupational medicine specialist,
11 ~~one the~~ physical therapist, ~~and~~ the doctor of psychology,
12 *and the acupuncturist.*

13 The term of office of members of the council shall be
14 four years, and a member shall hold office until the
15 appointment of a successor. However, the initial terms of
16 three of the doctors of medicine appointed by the
17 Governor shall expire, respectively, on December 31,
18 1991, December 31, 1992, and December 31, 1993, and the
19 initial terms of the doctors of medicine appointed by the
20 Speaker of the Assembly shall expire, respectively, on
21 December 31, 1991, December 31, 1992, and December
22 31, 1993. The initial term of one doctor of osteopathic
23 medicine and the doctor of psychology shall both expire
24 on December 31, 1991. Any vacancy shall be filled by the
25 original appointing authority for the unexpired term.

26 (c) The nine doctors of medicine and the doctors of
27 osteopathic medicine of the council shall represent
28 medical specialties concerned with the treatment of
29 industrial injury and disease. The doctors of medicine
30 shall be appointed after consultation with the statewide
31 and local associations of the medical profession. The
32 doctors of osteopathic medicine and psychology shall be
33 appointed after consultation with the statewide
34 associations of the osteopathic medical profession and
35 psychologists. The doctors of chiropractic shall be
36 appointed after consultation with statewide and local
37 associations of the chiropractic profession.

38 (d) Any physician of a type which must be
39 represented pursuant to subdivision (a) may be

1 considered for appointment to the council if the following
2 qualifications are met:

3 (1) A physician and surgeon shall be board certified in
4 his or her specialty or, if a doctor of chiropractic, shall be
5 certified in a chiropractic specialty recognized and
6 approved by the California Chiropractic Association, the
7 International Chiropractors Association of California, or
8 the American Chiropractic Association, or if a
9 psychologist, shall be board certified in clinical
10 psychology, or hold a doctoral degree in psychology from
11 an accredited university or professional school and have
12 not less than five years' postdoctoral experience in the
13 diagnosis and treatment of emotional and mental
14 disorders.

15 (2) The physician shall be experienced in treating and
16 evaluating industrial injuries and shall maintain an active
17 practice, of which at least one-third of the total practice
18 time is devoted to direct patient treatment.

19 (e) Members of the council shall, within the scope of
20 each member's professional training, do all of the
21 following:

22 (1) Maintain liaisons with the medical, osteopathic,
23 chiropractic, and psychological professions.

24 (2) Counsel and assist the administrative director and
25 perform other duties as the administrative director may
26 request.

27 (3) Assist in recruiting physicians for the medical
28 bureau of the division.

29 (4) Assist in developing guidelines for the
30 determination of disputed questions of clinical fact,
31 including guidelines for the range of time normally
32 required to perform a comprehensive medical-legal
33 evaluation, as well as the content of those procedures. The
34 guidelines shall include the range of time normally
35 required for direct patient contact between the physician
36 and the patient in each such procedure.

37 (5) Suggest standards for improving care furnished to
38 injured employees.

(6) Undertake continuing studies of developments in the field of rehabilitation, and continuously inform treating physicians of these developments.

(7) Recommend reasonable levels of fees for physicians performing services under Division 4 (commencing with Section 3200).

(8) In coordination with the administrative director, monitor and measure changes in the cost and frequency of the most common medical services, and adopt guidelines for the treatment of common industrial injuries on or before July 1, 1994. The guidelines shall reflect practices as generally accepted by the health care community, and shall apply the current standards of care, including, but not limited to, appropriate and inappropriate diagnostic techniques, treatment modalities, adjustive modalities, length of treatment, and appropriate specialty referrals. On or before July 1, 1994, the administrative director shall adopt model utilization protocols in order to provide utilization review standards. All insurers shall comply with this protocol by July 1, 1995.

(9) In consultation with the administrative director, promulgate a form which may be used by treating physicians to report on medical issues necessary to determine an employee's compensation.

(f) The council shall appoint an advisory committee on psychiatric injuries with both psychologists and psychiatrists as members and shall consider the advisory committee's recommendations concerning psychiatric injuries. The council may appoint advisory committees for other specialties as may be necessary to the performance of its duties.

(g) No action of the council shall be taken unless concurred in by not less than nine members present and voting at a meeting.

(h) Members of the council shall receive actual, necessary traveling expenses and a per diem allowance of one hundred dollars (\$100) for each day spent in meetings of the council.

SEC. 2. Section 139.2 of the Labor Code is amended to read:

1 139.2. (a) The Industrial Medical Council shall
2 appoint qualified medical evaluators in each of the
3 respective specialties as required for the evaluation of
4 medical issues. The appointments shall be for two-year
5 terms.

6 (b) The council shall appoint as qualified medical
7 evaluators physicians, as defined in Section 3209.3, who
8 are licensed to practice in this state and who demonstrate
9 that they meet each of the following requirements:

10 (1) Pass an examination written and administered by
11 the Industrial Medical Council for the purpose of
12 demonstrating competence in evaluating medical issues
13 in the workers' compensation system. The council shall
14 administer the first examination on or before July 1, 1994.
15 Physicians qualified immediately before the first
16 examination is administered shall pass an examination by
17 November 1, 1994, to meet this requirement. Any
18 physician applying for appointment after July 1, 1994,
19 shall pass an examination prior to his or her appointment
20 as a qualified medical evaluator. Physicians are not
21 required to pass an additional examination for
22 reappointment. For preparation of the first examination,
23 a panel of not more than 40 experts, appointed by the
24 Industrial Medical Council, representing the physician
25 specialties required to take the qualified medical
26 evaluator examination, shall assist the council in
27 determining the knowledge, skills, and abilities required
28 by the qualified medical evaluator, writing items for the
29 examination, and conducting pretest and posttest
30 reviews of the items. This panel of experts shall be exempt
31 from the requirement of having to pass the examination
32 to be appointed as a qualified medical evaluator. This
33 panel of experts shall include: current or past council
34 members, or both, representatives from the professional
35 associations of those physician specialties required for the
36 evaluation of medical issues, or physicians deemed to be
37 well qualified in the evaluation of medical issues and
38 having a minimum of 10 years in practice, five years of
39 workers' compensation evaluation, and having served as

1 an agreed medical evaluator at least eight times in the
2 previous 12 months.

3 (2) Devote at least one-third of total practice time to
4 providing direct medical treatment, or has served as an
5 agreed medical evaluator on eight or more occasions in
6 the 12 months prior to applying to be a qualified medical
7 evaluator.

8 (3) Meet one of the following requirements:

9 (A) Is board certified in a specialty by an appropriate
10 board recognized by the council. For a physician with an
11 M.D. or D.O. degree, "board certified" means the
12 physician is board certified by a specialty board
13 recognized by the council and the Medical Board of
14 California or the Osteopathic Medical Board of
15 California.

16 (B) Is board qualified, as defined in this subparagraph,
17 for a period not to exceed seven years from the time the
18 physician first became board qualified under this
19 subparagraph. For a physician with an M.D. or D.O.
20 degree, "board qualified" means the physician has
21 completed the minimum requirements as defined by a
22 specialty board recognized by the council for
23 postgraduate training in the specialty at an institution
24 recognized by the American College of Graduate
25 Medical Education or the osteopathic equivalent.
26 Physicians who completed the minimum postgraduate
27 training requirements in a specialty on or after January
28 1, 1990, and prior to January 1, 1995, shall have until
29 January 1, 2003, to become board certified or to become
30 otherwise eligible under this section. A physician whose
31 board qualification status under this subparagraph in a
32 particular specialty expires during his or her
33 appointment as a qualified medical evaluator shall
34 continue to serve but shall not be reappointed by the
35 council in that specialty until he or she becomes board
36 certified or becomes otherwise eligible under this section.

37 No physician who failed a specialty certification
38 examination after 1985 shall be reappointed pursuant to
39 this subparagraph as a qualified medical evaluator in that

1 specialty until the physician subsequently passes the
2 specialty certification examination.

3 (C) Declares under penalty of perjury to the council
4 that he or she wrote 100 or more ratable comprehensive
5 medical-legal evaluation reports and served as an agreed
6 medical evaluator on 25 or more occasions during each
7 calendar year between January 1, 1990, and December 31,
8 1994.

9 (D) Has qualifications that the council and the
10 Medical Board of California or the Osteopathic Medical
11 Board of California, as appropriate, both deem to be
12 equivalent to board certification in a specialty.

13 (E) If a chiropractor, has either: (i) completed a
14 chiropractic postgraduate specialty program of a
15 minimum of 300 hours taught by a school or college
16 recognized by the council, the Board of Chiropractic
17 Examiners and the Council on Chiropractic Education;
18 or, (ii) been certified in California workers'
19 compensation evaluation by an appropriate California
20 professional chiropractic association or accredited
21 California college recognized by the council.

22 (F) If a psychologist, meets one of the following
23 requirements:

24 (i) Is board certified in clinical psychology by a board
25 recognized by the council.

26 (ii) Holds a doctoral degree in psychology, or a
27 doctoral degree deemed equivalent for licensure by the
28 Board of Psychology pursuant to Section 2914 of the
29 Business and Professions Code, from a university or
30 professional school recognized by the council and has not
31 less than five years' postdoctoral experience in the
32 diagnosis and treatment of emotional and mental
33 disorders.

34 (iii) Has not less than five years' postdoctoral
35 experience in the diagnosis and treatment of emotional
36 and mental disorders, and has served as an agreed
37 medical evaluator on eight or more occasions prior to
38 January 1, 1990.

39 (G) *If an acupuncturist, meets one of the following*
40 *requirements:*

1 (i) *Has completed an acupuncture postgraduate*
2 *specialty program of a minimum of 300 hours taught by*
3 *a provider recognized by the council.*

4 (ii) *Has been certified in California workers'*
5 *compensation evaluation by an appropriate California*
6 *professional acupuncture association or accredited*
7 *California college recognized by the council.*

8 (iii) *Has been appointed as a qualified medical*
9 *examiner and has obtained current qualified medical*
10 *examiner status prior to December 31, 1998.*

11 (H) Served as an agreed medical evaluator on eight or
12 more occasions prior to January 1, ~~1970~~ 1990.

13 (4) Does not have a conflict of interest as determined
14 under the regulations promulgated by the administrative
15 director pursuant to subdivision (o).

16 (5) Meets any additional medical or professional
17 standards adopted pursuant to paragraph (6) of
18 subdivision (j).

19 (c) The council shall promulgate standards for
20 appointment of physicians who are retired or who hold
21 teaching positions who are exceptionally well qualified to
22 serve as a qualified medical evaluator even though they
23 do not otherwise qualify under paragraph (2) of
24 subdivision (b). In no event shall a physician whose
25 full-time practice is limited to the forensic evaluation of
26 disability be appointed as a qualified medical evaluator
27 under this subdivision.

28 (d) The qualified medical evaluator, upon request,
29 shall be reappointed if he or she meets the qualifications
30 for appointment and meets all of the following criteria:

31 (1) Is in compliance with all applicable regulations and
32 evaluation guidelines adopted by the council.

33 (2) Has not had more than five of his or her evaluations
34 which were considered by a workers' compensation
35 judge at a contested hearing rejected by the judge or the
36 appeals board pursuant to this section during the most
37 recent two-year period during which the physician
38 served as a qualified medical evaluator. If the judge or the
39 appeals board rejects the qualified medical evaluator's
40 report on the basis that it fails to meet the minimum

1 standards for those reports established by the Industrial
2 Medical Council or the appeals board, the judge or the
3 appeals board, as the case may be, shall make a specific
4 finding to that effect, and shall give notice to the medical
5 evaluator and to the Industrial Medical Council. Any
6 rejection shall not be counted as one of the five qualifying
7 rejections until the specific finding has become final and
8 time for appeal has expired.

9 (3) Has completed within the previous 24 months at
10 least 12 hours of continuing education in impairment
11 evaluation or workers' compensation-related medical
12 dispute evaluation approved by the Industrial Medical
13 Council.

14 (4) Has not been terminated, suspended, placed on
15 probation, or otherwise disciplined by the council during
16 his or her most recent term as a qualified medical
17 evaluator.

18 If the evaluator does not meet any one of these criteria,
19 the Industrial Medical Council may in its discretion
20 reappoint or deny reappointment according to
21 regulations promulgated by the council. In no event may
22 a physician who does not currently meet the
23 requirements for initial appointment or who has been
24 terminated under subdivision (e) because his or her
25 license has been revoked or terminated by the licensing
26 authority be reappointed.

27 (e) The council may, in its discretion, suspend or
28 terminate a qualified medical evaluator during his or her
29 term of appointment without a hearing as provided
30 under subdivision (k) or (l) whenever: (1) the
31 evaluator's license to practice in California has been
32 suspended by the relevant licensing authority so as to
33 preclude practice, or has been revoked or terminated by
34 the licensing authority; or, (2) the evaluator has failed to
35 timely pay the fee required by the council pursuant to
36 subdivision (n).

37 (f) The Industrial Medical Council shall furnish a
38 physician, upon request, a written statement of its reasons
39 for termination of or for denying appointment or
40 reappointment as a qualified medical evaluator. Upon

1 receipt of a specific response to the statement of reasons,
2 the Industrial Medical Council shall review its decision
3 not to appoint or reappoint the physician or to terminate
4 the physician and shall notify the physician of its final
5 decision within 60 days after receipt of the physician's
6 response.

7 (g) The council shall establish agreements with
8 qualified medical evaluators to assure the expeditious
9 evaluation of cases assigned to them for comprehensive
10 medical evaluations.

11 (h) When the injured worker is not represented by an
12 attorney, the medical director appointed pursuant to
13 Section 122, shall assign three-member panels of qualified
14 medical evaluators within five working days after
15 receiving a request for a panel. If a panel is not assigned
16 within 15 working days, the employee shall have the right
17 to obtain a medical evaluation from any qualified medical
18 evaluator of his or her choice. The medical director shall
19 use a random selection method for assigning panels of
20 qualified medical evaluators. The medical director shall
21 select evaluators who are specialists of the type selected
22 by the employee. The medical director shall advise the
23 employee that he or she should consult with his or her
24 treating physician prior to deciding which type of
25 specialist to request. The Industrial Medical Council shall
26 promulgate a form which shall notify the employee of the
27 physicians selected for his or her panel. The form shall
28 include, for each physician on the panel, the physician's
29 name, address, telephone number, specialty, number of
30 years in practice, and a brief description of his or her
31 education and training, and shall advise the employee
32 that he or she is entitled to receive transportation
33 expenses and temporary disability for each day necessary
34 for the examination. The form shall also state in a clear
35 and conspicuous location and type: "You have the right
36 to consult with an information and assistance officer at no
37 cost to you prior to selecting the doctor to prepare your
38 evaluation, or you may consult with an attorney. If your
39 claim eventually goes to court, the judge will consider the
40 evaluation prepared by the doctor you select to decide

1 your claim.” When compiling the list of evaluators from
2 which to select randomly, the medical director shall
3 include all qualified medical evaluators who: (1) do not
4 have a conflict of interest in the case, as defined by
5 regulations adopted pursuant to subdivision (o); (2) are
6 certified by the council to evaluate in an appropriate
7 specialty and at locations within the general geographic
8 area of the employee’s residence; and, (3) have not been
9 suspended or terminated as a qualified medical evaluator
10 for failure to pay the fee required by the council pursuant
11 to subdivision (n) or for any other reason. When the
12 medical director determines that an employee has
13 requested an evaluation by a type of specialist which is
14 appropriate for the employee’s injury, but there are not
15 enough qualified medical evaluators of that type within
16 the general geographic area of the employee’s residence
17 to establish a three-member panel, the medical director
18 shall include sufficient qualified medical evaluators from
19 other geographic areas and the employer shall pay all
20 necessary travel costs incurred in the event the employee
21 selects an evaluator from another geographic area.

22 (i) The medical director appointed pursuant to
23 Section 122, shall continuously review the quality of
24 comprehensive medical evaluations and reports
25 prepared by agreed and qualified medical evaluators and
26 the timeliness with which evaluation reports are
27 prepared and submitted. The review shall include, but
28 not be limited to, a review of a random sample of reports
29 submitted to the division, and a review of all reports
30 alleged to be inaccurate or incomplete by a party to a case
31 for which the evaluation was prepared. The medical
32 director shall submit to the administrative director an
33 annual report summarizing the results of the continuous
34 review of medical evaluations and reports prepared by
35 agreed and qualified medical evaluators and make
36 recommendations for the improvement of the system of
37 medical evaluations and determinations.

38 (j) After public hearing pursuant to Section 5307.4, the
39 council shall promulgate rules and regulations
40 concerning the following medical issues:

1 (1) Standards governing the timeframes within which
2 medical evaluations shall be prepared and submitted by
3 agreed and qualified medical evaluators. Except as
4 provided in this subdivision, the timeframe for initial
5 medical evaluations to be prepared and submitted shall
6 be no more than 30 days after the evaluator has seen the
7 employee or otherwise commenced the medical
8 evaluation procedure. The council shall develop
9 regulations governing the provision of extensions of the
10 30-day period in cases: (A) where the evaluator has not
11 received test results or consulting physician's evaluations
12 in time to meet the 30-day deadline; and, (B) to extend
13 the 30-day period by not more than 15 days when the
14 failure to meet the 30-day deadline was for good cause.
15 For purposes of this subdivision, "good cause" means: (i)
16 medical emergencies of the evaluator or evaluator's
17 family; (ii) death in the evaluator's family; or, (iii) natural
18 disasters or other community catastrophes that interrupt
19 the operation of the evaluator's business. The council shall
20 develop timeframes governing availability of qualified
21 medical evaluators for unrepresented employees under
22 Sections 4061 and 4062. These timeframes shall give the
23 employee the right to the addition of a new evaluator to
24 his or her panel, selected at random, for each evaluator
25 not available to see the employee within a specified
26 period of time, but shall also permit the employee to
27 waive this right for a specified period of time thereafter.
28 (2) Procedures to be followed by all physicians in
29 evaluating the existence and extent of permanent
30 impairment and limitations resulting from an injury. In
31 order to produce complete, accurate, uniform, and
32 replicable evaluations, the procedures shall require that
33 an evaluation of anatomical loss, functional loss, and the
34 presence of physical complaints be supported, to the
35 extent feasible, by medical findings based on
36 standardized examinations and testing techniques
37 generally accepted by the medical community.
38 (3) Procedures governing the determination of any
39 disputed medical issues.

1 (4) Procedures to be used in determining the
2 compensability of psychiatric injury. The procedures
3 shall be in accordance with Section 3208.3 and shall
4 require that the diagnosis of a mental disorder be
5 expressed using the terminology and criteria of the
6 American Psychiatric Association's Diagnostic and
7 Statistical Manual of Mental Disorders, Third
8 Edition-Revised, or the terminology and diagnostic
9 criteria of other psychiatric diagnostic manuals generally
10 approved and accepted nationally by practitioners in the
11 field of psychiatric medicine.

12 (5) Guidelines for the range of time normally required
13 to perform the following:

14 (A) A medical-legal evaluation that has not been
15 defined and valued pursuant to Section 5307.6. However,
16 the council may recommend guidelines for evaluations
17 that have been defined and valued pursuant to Section
18 5307.6 for the purpose of governing the appointment,
19 reappointment, and discipline of qualified medical
20 evaluators. The guidelines shall establish minimum times
21 for patient contact in the conduct of the evaluations, and
22 shall be consistent with regulations adopted pursuant to
23 Section 5307.6.

24 (B) Any treatment procedures that have not been
25 defined and valued pursuant to Section 5307.1.

26 (C) Any other evaluation procedure requested by the
27 administrative director, the Insurance Commissioner, or
28 the council itself.

29 If, without good cause, the council fails to adopt the
30 guidelines required by subparagraph (A) or (B) by
31 March 31, 1994, or fails, without good cause, to adopt a
32 guideline pursuant to subparagraph (C) within six
33 months after a request by the administrative director or
34 the Insurance Commissioner, then the administrative
35 director shall have the authority to adopt the guideline.

36 (6) Any additional medical or professional standards
37 which a medical evaluator shall meet as a condition of
38 appointment, reappointment, or maintenance in the
39 status of a medical evaluator.

(k) Except as provided in this subdivision, the Industrial Medical Council may, in its discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the council, after hearing pursuant to subdivision (l), determines, based on substantial evidence, that a qualified medical evaluator:

(1) Has violated any material statutory or administrative duty.

(2) Has failed to follow the medical procedures or qualifications established by the council pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established by the council pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board.

No hearing shall be required prior to the suspension or termination of a physician's privilege to serve as a qualified medical evaluator when the physician has: (A) failed to timely pay the fee required by the council pursuant to subdivision (n); or, (B) had his or her license to practice in California suspended by the relevant licensing authority so as to preclude practice, or had the license revoked or terminated by the licensing authority.

(l) The council shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the council may, in its discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The council shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

1 (m) The council shall terminate from the list of
2 medical evaluators any physician where licensure has
3 been terminated by the relevant licensing board, or who
4 has been convicted of a misdemeanor or felony related to
5 the conduct of his or her medical practice, or of a crime
6 of moral turpitude. The council shall suspend or
7 terminate as a medical evaluator any physician who has
8 been suspended or placed on probation by the relevant
9 licensing board. If a physician is suspended or terminated
10 as a qualified medical evaluator under this subdivision, a
11 report prepared by the physician that is not complete,
12 signed, and furnished to one or more of the parties prior
13 to the date of conviction or action of the licensing board,
14 whichever is earlier, shall not be admissible in any
15 proceeding before the appeals board nor shall there be
16 any liability for payment for the report and any expense
17 incurred by the physician in connection with the report.

18 (n) Each qualified medical evaluator shall pay a fee, as
19 determined by the Industrial Medical Council, for
20 appointment or reappointment. Any qualified medical
21 evaluator appointed prior to January 1, 1993, shall also pay
22 the same fee as specified herein. These fees shall be based
23 on a sliding scale as established by the council. All
24 revenues from fees paid under this subdivision shall be
25 deposited into the Industrial Medicine Fund, which is
26 hereby created for the administration of the Industrial
27 Medical Council. Moneys paid into the Industrial
28 Medicine Fund for the activities of the Industrial Medical
29 Council shall not be used by any other department or
30 agency or for any purpose other than administration of
31 the council. The funds provided to the council from the
32 Industrial Medicine Fund shall not supplant any funds
33 appropriated to the council from the Workers'
34 Compensation Administration Revolving Fund, the
35 General Fund, or any other governmental source. Any
36 future annual appropriation to the council from the
37 Workers' Compensation Administration Revolving Fund,
38 the General Fund, or any other governmental source
39 shall not be less than the amount appropriated or
40 provided during the 1991-92 fiscal year.

(o) An evaluator may not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under this code. The administrative director, after consultation with the council and the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision on or before July 1, 1994.

SEC. 3. Section 3209.3 of the Labor Code is amended to read:

3209.3. (a) "Physician" includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

(b) "Psychologist" means a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d) "Acupuncturist" means a person who holds an acupuncturist's certificate issued pursuant to Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code.

~~(e) Nothing in this section shall be construed to authorize acupuncturists to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under Section 2708 of the Unemployment Insurance Code.~~

SEC. 4. Section 3209.5 of the Labor Code is amended to read:

1 3209.5. Medical, surgical, and hospital treatment,
2 including nursing, medicines, medical and surgical
3 supplies, crutches, and apparatus, includes but is not
4 limited to services and supplies by physical therapists ~~and~~,
5 chiropractic practitioners, *and acupuncturists*, as licensed
6 by California state law and within the scope of their
7 practice as defined by law.

8 *SEC. 5. Section 4600 of the Labor Code is amended to*
9 *read:*

10 4600. Medical, surgical, chiropractic, *acupuncture*,
11 and hospital treatment, including nursing, medicines,
12 medical and surgical supplies, crutches, and apparatus,
13 including orthotic and prosthetic devices and services,
14 that is reasonably required to cure or relieve from the
15 effects of the injury shall be provided by the employer. In
16 the case of his or her neglect or refusal seasonably to do
17 so, the employer is liable for the reasonable expense
18 incurred by or on behalf of the employee in providing
19 treatment. After 30 days from the date the injury is
20 reported, the employee may be treated by a physician of
21 his or her own choice or at a facility of his or her own
22 choice within a reasonable geographic area. However, if
23 an employee has notified his or her employer in writing
24 prior to the date of injury that he or she has a personal
25 physician, the employee shall have the right to be treated
26 by that physician from the date of injury. If an employee
27 requests a change of physician pursuant to Section 4601,
28 the request may be made at any time after the injury, and
29 the alternative physician ~~or~~ chiropractor, *or*
30 *acupuncturist* shall be provided within five days of the
31 request as required by Section 4601. For the purpose of
32 this section, “personal physician” means the employee’s
33 regular physician and surgeon, licensed pursuant to
34 Chapter 5 (commencing with Section 2000) of Division
35 2 of the Business and Professions Code, who has
36 previously directed the medical treatment of the
37 employee, and who retains the employee’s medical
38 records, including his or her medical history.

39 Where at the request of the employer, the employer’s
40 insurer, the administrative director, the appeals board, or

1 a workers' compensation judge, the employee submits to
2 examination by a physician, he or she shall be entitled to
3 receive in addition to all other benefits herein provided
4 all reasonable expenses of transportation, meals, and
5 lodging incident to reporting for the examination,
6 together with one day of temporary disability indemnity
7 for each day of wages lost in submitting to the
8 examination. Regardless of the date of injury, "reasonable
9 expenses of transportation" includes mileage fees from
10 the employee's home to the place of the examination and
11 back at the rate of twenty-one cents (\$0.21) a mile or the
12 mileage rate adopted by the Director of the Department
13 of Personnel Administration pursuant to Section 19820 of
14 the Government Code, whichever is higher, plus any
15 bridge tolls. The mileage and tolls shall be paid to the
16 employee at the time he or she is given notification of the
17 time and place of the examination.

18 Where at the request of the employer, the employer's
19 insurer, the administrative director, the appeals board, a
20 workers' compensation judge, an employee submits to
21 examination by a physician and the employee does not
22 proficiently speak or understand the English language, he
23 or she shall be entitled to the services of a qualified
24 interpreter in accordance with conditions and a fee
25 schedule prescribed by the administrative director.
26 These services shall be provided by the employer. For
27 purposes of this section, "qualified interpreter" means a
28 language interpreter certified, or deemed certified,
29 pursuant to Article 8 (commencing with Section
30 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2
31 of, or Section 68566 of, the Government Code.

32 *SEC. 6. Section 4600.3 of the Labor Code is amended*
33 *to read:*

34 4600.3. (a) (1) Notwithstanding Section 4600, when
35 a self-insured employer, group of self-insured employers,
36 or the insurer of an employer contracts with at least two
37 health care organizations certified pursuant to Section
38 4600.5 for health care services required by this article to
39 be provided to injured employees, those employees who
40 are subject to the contract shall receive medical services

1 in the manner prescribed in the contract, providing that
2 the employee may choose to be treated by a personal
3 physician ~~or~~, personal chiropractor, *or personal*
4 *acupuncturist* that he or she has designated prior to the
5 injury, in which case the employee shall not be treated by
6 the health care organization. Every employee shall be
7 given an affirmative choice at the time of employment
8 and at least annually thereafter to designate or change
9 the designation of a health care organization or a personal
10 physician ~~or~~, personal chiropractor, *or personal*
11 *acupuncturist*. The choice shall be memorialized in
12 writing and maintained in the employee's personnel
13 records. The employee who has designated a personal
14 physician ~~or~~, personal chiropractor, *or personal*
15 *acupuncturist* may change ~~physicians~~ *their designated*
16 *caregiver* at any time prior to the injury. Any employee
17 who fails to choose between health care organizations or
18 to designate a personal physician ~~or~~, personal
19 chiropractor, *or personal acupuncturist* shall be treated
20 by the health care organization selected by the employer.

21 (2) Each ~~such~~ contract ~~must~~ *described in paragraph*
22 *(1)* shall comply with the certification standards provided
23 in Section 4600.5, and shall provide all medical, surgical,
24 chiropractic, *acupuncture*, and hospital treatment,
25 including nursing, medicines, medical and surgical
26 supplies, crutches, and apparatus, including artificial
27 members, that is reasonably required to cure or relieve
28 the effects of the injury, as required by this division,
29 without any payment by the employee of deductibles,
30 copayments, or any share of the premium. However, an
31 employee may receive immediate emergency medical
32 treatment that is compensable from a medical service or
33 health care provider who is not a member of the health
34 care organization.

35 (3) The employee shall be allowed to choose from at
36 least two health care organizations, of which at least one
37 must be compensated on a fee-for-service basis. If one or
38 more of the health care organizations offered by the
39 employer is the workers' compensation insurer that
40 covers the employee or is an entity that controls or is

1 controlled by that insurer, as defined by Section 1215 of
2 the Insurance Code, the employee shall be allowed to
3 choose from at least one additional health care
4 organization, that is not the workers' compensation
5 insurer that covers the employee, or entities that control
6 or are controlled by that insurer, of which at least one
7 must be compensated on a fee-for-service basis.

8 (4) Insurers of employers, a group of self-insured
9 employers, or self-insured employers who contract with
10 a health care organization for medical services shall give
11 notice to employees of eligible medical service providers
12 and ~~such~~ any other information regarding the contract
13 and manner of receiving medical services as the
14 administrative director may prescribe. Employees shall
15 be duly notified that if they choose to receive care from
16 the health care organization they must receive treatment
17 for all occupational injuries and illnesses as prescribed by
18 this section.

19 (b) Notwithstanding subdivision (a), no employer
20 which is required to bargain with an exclusive or certified
21 bargaining agent which represents employees of the
22 employer in accordance with state or federal
23 employer-employee relations law shall contract with a
24 health care organization for purposes of Section 4600.5
25 with regard to employees whom the bargaining agent is
26 recognized or certified to represent for collective
27 bargaining purposes pursuant to state or federal
28 employer-employee relations law unless authorized to do
29 so by mutual agreement between the bargaining agent
30 and the employer. If the collective bargaining agreement
31 is subject to the National Labor Relations Act, the
32 employer may contract with a health care organization
33 for purposes of Section 4600.5 at any time when the
34 employer and bargaining agent have bargained to
35 impasse to the extent required by federal law.

36 (c) (1) When an employee is not receiving or is not
37 eligible to receive health care coverage for
38 nonoccupational injuries or illnesses provided by the
39 employer, if 90 days from the date the injury is reported
40 the employee who has been receiving treatment from a

1 health care organization or his or her physician,
2 chiropractor, *acupuncturist*, or other agent notifies his or
3 her employer in writing that he or she desires to stop
4 treatment by the health care organization, he or she shall
5 have the right to be treated by a physician, *chiropractor*,
6 *or acupuncturist* or at a facility of his or her own choosing
7 within a reasonable geographic area.

8 (2) When an employee is receiving or is eligible to
9 receive health care coverage for nonoccupational injuries
10 or illnesses provided by the employer, and has agreed to
11 receive care for occupational injuries and illnesses from
12 a health care organization provided by the employer, the
13 employee may be treated for occupational injuries and
14 diseases by a physician, *chiropractor*, *or acupuncturist* of
15 his or her own choice or at a facility of his or her own
16 choice within a reasonable geographic area if the
17 employee or his or her physician, chiropractor,
18 *acupuncturist*, or other agent notifies his or her employer
19 in writing only after 180 days from the date the injury was
20 reported, or upon the date of contract renewal or open
21 enrollment of the health care organization, whichever
22 occurs first, but in no case until 90 days from the date the
23 injury was reported.

24 (3) If the employee is receiving or is eligible to receive
25 health care coverage for nonoccupational injuries or
26 illnesses provided by the employer, and his or her
27 physician ~~or~~ chiropractor, *or acupuncturist* for
28 nonoccupational illnesses or injuries is participating in at
29 least one of the health care organizations offered to the
30 employee, and he or she has chosen treatment by one of
31 these health care organizations for occupational injuries
32 or illnesses, the employee may be treated by a physician,
33 *chiropractor*, *or acupuncturist* of his or her own choice or
34 at a facility of his or her own choice within a reasonable
35 geographic area if the employee or his or her physician,
36 chiropractor, *acupuncturist*, or other agent notifies his or
37 her employer in writing only after 365 days from the date
38 the injury was reported, or upon the date of contract
39 renewal or open enrollment, whichever occurs first, but



1 in no case until 90 days from the date the injury was
2 reported.

3 (4) For purposes of this subdivision, an employer shall
4 be deemed to provide health care coverage for
5 nonoccupational injuries and illnesses if the employer
6 pays more than one-half the costs of the coverage, or if the
7 plan is established pursuant to collective bargaining.

8 (d) An employee and employer may agree to other
9 forms of therapy pursuant to Section 3209.7.

10 (e) An employee enrolled in a health care
11 organization shall have the right to no less than one
12 change of physician on request, and shall be given a
13 choice of physicians affiliated with the health care
14 organization. The health care organization shall provide
15 the employee a choice of participating physicians within
16 five days of receiving a request. In addition, the employee
17 shall have the right to a second opinion from ~~an~~ a
18 participating physician on a matter pertaining to
19 diagnosis from a participating physician.

20 (f) Nothing in this section or Section 4600.5 shall be
21 construed to prohibit a self-insured employer, a group of
22 self-insured employers, or insurer from engaging in any
23 activities permitted by Section 4600.

24 (g) Notwithstanding subdivision (c), in the event that
25 the employer, group of employers, or the employer's
26 workers' compensation insurer no longer contracts with
27 the health care organization that has been treating an
28 injured employee, the employee may continue treatment
29 provided or arranged by the health care organization. If
30 the employee does not choose to continue treatment by
31 the health care organization, the employer may control
32 the employee's treatment for 30 days from the date the
33 injury was reported. After that period, the employee may
34 be treated by a physician of his or her own choice or at a
35 facility of his or her own choice within a reasonable
36 geographic area.

37 *SEC. 7. Section 4600.5 of the Labor Code is amended*
38 *to read:*

39 4600.5. (a) Any health care service plan licensed
40 pursuant to the Knox-Keene Health Care Service Plan

1 Act, a disability insurer licensed by the Department of
2 Insurance, or any entity, including, but not limited to,
3 workers' compensation insurers and third-party
4 administrators authorized by the administrative director
5 under subdivision (e), may make written application to
6 the administrative director to become certified as a
7 health care organization to provide health care to injured
8 employees for injuries and diseases compensable under
9 this article.

10 (b) Each application for certification shall be
11 accompanied by a reasonable fee prescribed by the
12 administrative director, sufficient to cover the actual cost
13 of processing the application. A certificate is valid for the
14 period that the director may prescribe unless sooner
15 revoked or suspended.

16 (c) If the health care organization is a health care
17 service plan licensed pursuant to the Knox-Keene Health
18 Care Service Plan Act, the administrative director shall
19 certify the plan to provide health care pursuant to Section
20 4600.3 if the director finds that the plan is in good standing
21 with the Department of Corporations and meets the
22 following additional requirements:

23 (1) Proposes to provide all medical and health care
24 services that may be required by this article.

25 (2) Provides a program involving cooperative efforts
26 by the employees, the employer, and the health plan to
27 promote workplace health and safety, consultative and
28 other services, and early return to work for injured
29 employees.

30 (3) Proposes a timely and accurate method to meet
31 the requirements set forth by the administrative director
32 for all carriers of workers' compensation coverage to
33 report necessary information regarding medical and
34 health care service cost and utilization, rates of return to
35 work, average time in medical treatment, and other
36 measures as determined by the administrative director to
37 enable the director to determine the effectiveness of the
38 plan.

39 (4) Agrees to provide the administrative director with
40 information, reports, and records prepared and

1 submitted to the Department of Corporations in
2 compliance with the Knox-Keene Health Care Service
3 Plan Act, relating to financial solvency, provider
4 accessibility, peer review, utilization review, and quality
5 assurance, upon request, if the administrative director
6 determines the information is necessary to verify that the
7 plan is providing medical treatment to injured employees
8 in compliance with the requirements of this code.

9 Disclosure of peer review proceedings and records to
10 the administrative director shall not alter the status of the
11 proceedings or records as privileged and confidential
12 communications pursuant to Sections 1370 and 1370.1 of
13 the Health and Safety Code.

14 (5) Demonstrates the capability to provide
15 occupational medicine and related disciplines.

16 (6) Complies with any other requirement the
17 administrative director determines is necessary to
18 provide medical services to injured employees consistent
19 with the intent of this article, including, but not limited
20 to, a written patient grievance policy.

21 (d) If the health care organization is a disability
22 insurer licensed by the Department of Insurance, and is
23 in compliance with subdivision (d) of Sections 10133 and
24 10133.5 of the Insurance Code, the administrative
25 director shall certify the organization to provide health
26 care pursuant to Section 4600.3 if the director finds that
27 the plan is in good standing with the Department of
28 Insurance and meets the following additional
29 requirements:

30 (1) Proposes to provide all medical and health care
31 services that may be required by this article.

32 (2) Provides a program involving cooperative efforts
33 by the employees, the employer, and the health plan to
34 promote workplace health and safety, consultative and
35 other services, and early return to work for injured
36 employees.

37 (3) Proposes a timely and accurate method to meet
38 the requirements set forth by the administrative director
39 for all carriers of workers' compensation coverage to
40 report necessary information regarding medical and

1 health care service cost and utilization, rates of return to
2 work, average time in medical treatment, and other
3 measures as determined by the administrative director to
4 enable the director to determine the effectiveness of the
5 plan.

6 (4) Agrees to provide the administrative director with
7 information, reports, and records prepared and
8 submitted to the Department of Insurance in compliance
9 with the Insurance Code relating to financial solvency,
10 provider accessibility, peer review, utilization review,
11 and quality assurance, upon request, if the administrative
12 director determines the information is necessary to verify
13 that the plan is providing medical treatment to injured
14 employees consistent with the intent of this article.

15 Disclosure of peer review proceedings and records to
16 the administrative director shall not alter the status of the
17 proceedings or records as privileged and confidential
18 communications pursuant to subdivision (d) of Section
19 10133 of the Insurance Code.

20 (5) Demonstrates the capability to provide
21 occupational medicine and related disciplines.

22 (6) Complies with any other requirement the
23 administrative director determines is necessary to
24 provide medical services to injured employees consistent
25 with the intent of this article, including, but not limited
26 to, a written patient grievance policy.

27 (e) If the health care organization is a workers'
28 compensation insurer, third-party administrator, or any
29 other entity that the administrative director determines
30 ~~to meet~~ *meets* the requirements of Section 4600.6, the
31 administrative director shall certify the organization to
32 provide health care pursuant to Section 4600.3 if the
33 director finds that it meets the following additional
34 requirements:

35 (1) Proposes to provide all medical and health care
36 services that may be required by this article.

37 (2) Provides a program involving cooperative efforts
38 by the employees, the employer, and the health plan to
39 promote workplace health and safety, consultative and

1 other services, and early return to work for injured
2 employees.

3 (3) Proposes a timely and accurate method to meet
4 the requirements set forth by the administrative director
5 for all carriers of workers' compensation coverage to
6 report necessary information regarding medical and
7 health care service cost and utilization, rates of return to
8 work, average time in medical treatment, and other
9 measures as determined by the administrative director to
10 enable the director to determine the effectiveness of the
11 plan.

12 (4) Agrees to provide the administrative director with
13 information, reports, and records relating to provider
14 accessibility, peer review, utilization review, quality
15 assurance, advertising, disclosure, medical and financial
16 audits, and grievance systems, upon request, if the
17 administrative director determines the information is
18 necessary to verify that the plan is providing medical
19 treatment to injured employees consistent with the
20 intent of this article.

21 Disclosure of peer review proceedings and records to
22 the administrative director shall not alter the status of the
23 proceedings or records as privileged and confidential
24 communications pursuant to subdivision (d) of Section
25 10133 of the Insurance Code.

26 (5) Demonstrates the capability to provide
27 occupational medicine and related disciplines.

28 (6) Complies with any other requirement the
29 administrative director determines is necessary to
30 provide medical services to injured employees consistent
31 with the intent of this article, including, but not limited
32 to, a written patient grievance policy.

33 (7) Complies with the following requirements:

34 (A) An organization certified by the administrative
35 director under this subdivision may not provide or
36 undertake to arrange for the provision of health care to
37 employees, or to pay for or to reimburse any part of the
38 cost of that health care in return for a prepaid or periodic
39 charge paid by or on behalf of those employees.

(B) Every organization certified under this subdivision shall operate on a fee-for-service basis. As used in this section, fee for service refers to the situation where the amount of reimbursement paid by the employer to the organization or providers of health care is determined by the amount and type of health care rendered by the organization or provider of health care.

(C) An organization certified under this subdivision is prohibited from assuming risk.

(f) (1) A workers' compensation health care provider organization authorized by the Department of Corporations on December 31, 1997, shall be eligible for certification as a health care organization under subdivision (e).

(2) An entity that had, on December 31, 1997, submitted an application with the Commissioner of Corporations under Part 3.2 (commencing with Section 5150) shall be considered an applicant for certification under subdivision (e) and shall be entitled to priority in consideration of its application. The Commissioner of Corporations shall provide complete files for all pending applications to the administrative director on or before January 31, 1998.

(g) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(h) Charges for services arranged for or provided by health care service plans certified by this section and that are paid on a per-enrollee-periodic-charge basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(i) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(j) In consultation with interested parties, including the Department of Corporations and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(k) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Corporations, a workers' compensation health care provider organization authorized by the Department of Corporations, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(l) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated

1 chiropractor for the evaluation or treatment, or both, of
2 neuromusculoskeletal conditions.

3 (3) Whenever a dispute concerning the
4 appropriateness or necessity of chiropractic care for
5 work-related injuries arises, the dispute shall be resolved
6 by the health care organization's utilization review
7 process for chiropractic care in accordance with the
8 health care organization's guidelines for chiropractic care
9 established by paragraph (2).

10 Chiropractic utilization review for work-related
11 injuries shall be conducted in accordance with the health
12 care organization's approved quality assurance standards
13 and utilization review process for chiropractic care.
14 Chiropractors affiliated with the plan shall have access to
15 the health care organization's provider appeals process
16 and, in the case of chiropractic care for work-related
17 injuries, the review shall include review by a chiropractor
18 affiliated with the health care organization, as
19 determined by the health care organization.

20 (4) The health care organization shall inform
21 employees of the procedures for processing and resolving
22 grievances, including those related to chiropractic care,
23 including the location and telephone number where
24 grievances may be submitted.

25 (5) All guidelines for chiropractic care and utilization
26 review shall be consistent with the standards of this code
27 that require care to cure or relieve the effects of the
28 industrial injury.

29 (m) Individually identifiable medical information on
30 patients submitted to the division shall not be subject to
31 the California Public Records Act (Chapter 3.5
32 (commencing with Section 6250) of Division 7 of Title 1
33 of the Government Code).

34 (n) *(1) When an injured employee requests*
35 *acupuncture treatment for work-related injuries, the*
36 *health care organization shall provide the injured worker*
37 *with access to the services of an acupuncturist pursuant*
38 *to guidelines for acupuncture care established by*
39 *paragraph (2). Within five working days of the*
40 *employee's request to see an acupuncturist, the health*

1 care organization and any person or entity who directs
2 the kind or manner of health care services for the plan
3 shall refer an injured employee to an affiliated
4 acupuncturist for work-related injuries that are within
5 the guidelines for acupuncture care established by
6 paragraph (2). Acupuncture care rendered in
7 accordance with guidelines for acupuncture care
8 established pursuant to paragraph (2) shall be provided
9 by duly licensed acupuncturists affiliated with the plan.

10 (2) The health care organization shall establish
11 guidelines for acupuncture care in consultation with
12 affiliated acupuncturists who are participants in the
13 health care organization's utilization review process for
14 acupuncture care, which may include qualified medical
15 evaluators. The guidelines for acupuncture care shall, at
16 a minimum, explicitly require the referral of any injured
17 employee who so requests to an affiliated acupuncturist
18 for the evaluation or treatment, or both, of
19 neuromusculoskeletal conditions.

20 (3) Whenever a dispute concerning the
21 appropriateness or necessity of acupuncture care for
22 work-related injuries arises, the dispute shall be resolved
23 by the health care organization's utilization review
24 process for acupuncture care in accordance with the
25 health care organization's guidelines for acupuncture
26 care established by paragraph (2).

27 Acupuncture utilization review for work-related
28 injuries shall be conducted in accordance with the health
29 care organization's approved quality assurance standards
30 and utilization review process for acupuncture care.
31 Acupuncturists affiliated with the plan shall have access
32 to the health care organization's provider appeals process
33 and, in the case of acupuncture care for work-related
34 injuries, the review shall include review by an
35 acupuncturist affiliated with the health care
36 organization, as determined by the health care
37 organization.

38 (4) The health care organization shall inform
39 employees of the procedures for processing and resolving
40 grievances, including those related to acupuncture care,

1 *including the location and telephone number where*
2 *grievances may be submitted.*

3 *(5) All guidelines for acupuncture care and utilization*
4 *review shall be consistent with the standards of this code*
5 *that require care to cure or relieve the effects of the*
6 *industrial injury.*

7 *SEC. 8. Section 4601 of the Labor Code is amended to*
8 *read:*

9 4601. (a) If the employee so requests, the employer
10 shall tender the employee one change of physician. The
11 employee at any time may request that the employer
12 tender this one-time change of physician. Upon request
13 of the employee for a change of physician, the maximum
14 amount of time permitted by law for the employer or
15 insurance carrier to provide the employee an alternative
16 physician or, if requested by the employee, a
17 chiropractor, *or an acupuncturist* shall be five working
18 days from the date of the request. Notwithstanding the
19 30-day time period specified in Section 4600, a request for
20 a change of physician pursuant to this section may be
21 made at any time. The employee is entitled, in any serious
22 case, upon request, to the services of a consulting
23 physician ~~or~~ chiropractor, *or acupuncturist* of his or her
24 choice at the expense of the employer. The treatment
25 shall be at the expense of the employer.

26 (b) If an employee requesting a change of physician
27 pursuant to subdivision (a) has notified his or her
28 employer in writing prior to the date of injury that he or
29 she has a personal chiropractor, the alternative physician
30 tendered by the employer to the employee, if the
31 employee so requests, shall be the employee's personal
32 chiropractor. For the purpose of this ~~section~~ *article*,
33 "personal chiropractor" means the employee's regular
34 chiropractor licensed pursuant to Chapter 2
35 (commencing with Section 1000) of Division 2 of the
36 Business and Professions Code, who has previously
37 directed treatment of the employee, and who retains the
38 employee's chiropractic treatment records, including his
39 or her chiropractic history.

1 (c) If an employee requesting a change of physician
2 pursuant to subdivision (a) has notified his or her
3 employer in writing prior to the date of injury that he or
4 she has a personal acupuncturist, the alternative
5 physician tendered by the employer to the employee, if
6 the employee so requests, shall be the employee's
7 personal acupuncturist. For the purpose of this article,
8 "personal acupuncturist" means the employee's regular
9 acupuncturist licensed pursuant to Chapter 12
10 (commencing with Section 4935) of Division 2 of the
11 Business and Professions Code, who has previously
12 directed treatment of the employee, and who retains the
13 employee's acupuncture treatment records, including his
14 or her acupuncture history.

15 ~~amended by Section 1 of Chapter 26 of the Statutes of~~
16 ~~1996, is amended to read:~~

17 ~~3209.3. (a) "Physician" includes physicians and~~
18 ~~surgeons holding an M.D. or D.O. degree, psychologists,~~
19 ~~acupuncturists, optometrists, dentists, podiatrists, and~~
20 ~~chiropractic practitioners licensed by California state law~~
21 ~~and within the scope of their practice as defined by~~
22 ~~California state law.~~

23 ~~(b) "Psychologist" means a licensed psychologist with~~
24 ~~a doctoral degree in psychology, or a doctoral degree~~
25 ~~deemed equivalent for licensure by the Board of~~
26 ~~Psychology pursuant to Section 2914 of the Business and~~
27 ~~Professions Code, and who either has at least two years of~~
28 ~~clinical experience in a recognized health setting, or has~~
29 ~~met the standards of the National Register of the Health~~
30 ~~Service Providers in Psychology.~~

31 ~~(c) When treatment or evaluation for an injury is~~
32 ~~provided by a psychologist, provision shall be made for~~
33 ~~appropriate medical collaboration when requested by~~
34 ~~the employer or the insurer.~~

35 ~~(d) "Acupuncturist" means a person who holds an~~
36 ~~acupuncturist's certificate issued pursuant to Chapter 12~~
37 ~~(commencing with Section 4925) of Division 2 of the~~
38 ~~Business and Professions Code.~~

39 ~~(e) Nothing in this section shall be construed to~~
40 ~~authorize acupuncturists to determine disability for the~~

1 ~~purposes of Article 3 (commencing with Section 4650) of~~
2 ~~Chapter 2 of Part 2, or under Section 2708 of the~~
3 ~~Unemployment Insurance Code.~~
4 ~~SEC. 2. Section 3209.3 of the Labor Code, as amended~~
5 ~~by Section 2 of Chapter 26 of the Statutes of 1996, is~~
6 ~~repealed.~~

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